

Jiangxiao Athena Hou (Bar. No. 215256)
ZELLE HOFMANN VOELBEL &
MASON LLP
44 Montgomery Street, Suite 3400
San Francisco, California 94104
Telephone: (415) 693-0700
Facsimile: (415) 693-0770
Email: ahou@zelle.com

Proposed Local Counsel for the Class

Christopher J. Keller
Eric J. Belfi
Michael W. Stocker (Bar No. 179083)
LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477
Email: ckeller@labaton.com
ebelfi@labaton.com
mstocker@labaton.com

*Counsel for Laborers Pension Trust
Fund for Northern California and Proposed
Lead Counsel for the Class*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
AT SAN FRANCISCO

1)
2 RICHARD MITCHEM, Individually and On) Case No.: 3:11-cv-05399-WHA
3 Behalf of All Others Similarly Situated,)
4 Plaintiff,) CLASS ACTION
5 vs.) Hearing Date: February 23, 2012
6 DIAMOND FOODS, INC., MICHAEL J.) Time: 2:00 p.m.
7 MENDES, and STEVEN M. NEIL,) Judge: Hon. William H. Alsup
8 Defendants.) Courtroom: 8
9)
10)
11 STEWART WOODWARD, Individually and) Case No.: 3:11-cv-05409-WHA
12 On Behalf of All Others Similarly)
13 Plaintiff,) CLASS ACTION
14 vs.) Hearing Date: February 23, 2012
15 DIAMOND FOODS, INC., MICHAEL J.) Time: 2:00 p.m.
16 MENDES, and STEVEN M. NEIL,) Judge: Hon. William H. Alsup
17 Defendants.) Courtroom: 8
18)
19)
20 GARY RALL and MARION RALL, On Behalf) Case No.: 3:11-cv-05457-WHA
21 of Themselves and All Others Similarly)
22 Situated,) CLASS ACTION
23 Plaintiff,) Hearing Date: February 23, 2012
24 vs.) Time: 2:00 p.m.
25 DIAMOND FOODS, INC., MICHAEL J.) Judge: Hon. William H. Alsup
26 MENDES, and STEVEN M. NEIL,) Courtroom: 8
27 Defendants.)
28)

1 GARY SIMON, Individually and On Behalf of) Case No.: 3:11-cv-05479-WHA
2 All Others Similarly Situated,)
3 Plaintiff,) CLASS ACTION
4 vs.) Hearing Date: February 23, 2012
5 DIAMOND FOODS, INC., MICHAEL J.) Time: 2:00 p.m.
6 MENDES, and STEVEN M. NEIL,) Judge: Hon. William H. Alsup
7 Defendants.) Courtroom: 8
8
9 HENRY J. MACFARLAND, Individually and) Case No.: 3:11-cv-05615-WHA
10 On Behalf of All Others Similarly Situated,)
11 Plaintiff,) CLASS ACTION
12 vs.) Hearing Date: February 23, 2012
13 DIAMOND FOODS, INC., MICHAEL J.) Time: 2:00 p.m.
14 MENDES, and STEVEN M. NEIL,) Judge: Hon. William H. Alsup
15 Defendants.) Courtroom: 8
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1	TABLE OF AUTHORITIES	ii
2	NOTICE OF MOTION AND MOTION	1
3	MEMORANDUM OF POINTS AND AUTHORITIES	1
4	I. STATEMENT OF THE ISSUES TO BE DECIDED.....	1
5	II. STATEMENT OF THE RELEVANT FACTS	2
6	III. ARGUMENT	5
7	A. THE RELATED ACTIONS SHOULD BE CONSOLIDATED	5
8	B. NORTHERN CALIFORNIA LABORERS SHOULD BE APPOINTED LEAD PLAINTIFF.....	6
9	1. The PSLRA Standard for Appointing Lead Plaintiff.....	6
10	2. Northern California Laborers is the ‘‘Most Adequate Plaintiff’’	7
11	a. Northern California Laborers Has Satisfied the PSLRA’s Procedural Requirements	7
12	b. Northern California Laborers Has the Largest Financial Interest in the Relief Sought by the Class	7
13	c. Northern California Laborers Satisfies Rule 23’s Typicality and Adequacy Requirements	8
14	d. Northern California Laborers Is Precisely the Type of Lead Plaintiff Envisioned by the PSLRA	10
15	C. THE COURT SHOULD APPROVE NORTHERN CALIFORNIA LABORERS’ SELECTION OF COUNSEL	11
16	IV. CONCLUSION.....	12

TABLE OF AUTHORITIES

FEDERAL CASES

4	<i>Aronson v. McKesson HBOC, Inc.</i> , 79 F. Supp. 2d 1146 (N.D. Cal. 1999)	5, 8
5	<i>In re Cavanaugh</i> , 306 F.3d 726 (9th Cir. 2002)	6, 7, 11
6	<i>In re Cendant Corp. Litig.</i> , 264 F.3d 201 (3d Cir. 2001).....	10
7	<i>In re Charles Schwab Sec. Litig.</i> , No. C 08-01510-WHA, 2008 WL 2635495 (N.D. Cal. July 3, 2008).....	8, 9
8	<i>Ferrari v. Gisch</i> , 225 F.R.D. 599 (C.D. Cal. 2004).....	7, 9
9	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	9
10	<i>Richardson v. TVIA, Inc.</i> , No. C 06 06304, 2007 WL 1129344 (N.D. Cal. Apr. 16, 2007).....	9
11	<i>Slaven v. BP Am., Inc.</i> , 190 F.R.D. 649 (C.D. Cal. 2000).....	9
12	<i>In re Surebeam Corp. Sec. Litig.</i> , No. 03-cv-1721, 2004 WL 5159061 (S.D. Cal. Jan. 5, 2004)	9

DOCKETED CASES

22	<i>In re Am. Int'l Group, Inc. Sec. Litig.,</i> No. 04-cv-8141 (S.D.N.Y. 2004).....	11
23	<i>In re Broadcom Corp. Class Action Litig.,</i> No. 06-cv-5036 (C.D. Cal. 2006)	11
24	<i>In re HealthSouth Corp. Sec. Litig.,</i> No. 03-cv-1501 (N.D. Ala. 2003).....	11
25	<i>In re Monster Worldwide, Inc. Sec. Litig.,</i> No. 07-cv-2237 Hr'g Tr. (S.D.N.Y. June 14, 2007)	12

1	<i>Pappas v. Countrywide Fin. Corp.</i> , No. 07-cv-5295, slip op. (C.D. Cal. Nov. 28, 2007).....	8, 11
2		
3	<i>In re Sipex Corp. Sec. Litig.</i> , No. 05-cv-392-WHA, slip op. (N.D. Cal. May 24, 2005)	8
4		
5		

FEDERAL STATUTES

6		
7	15 U.S.C. § 78u-4(a)(3)(B)(ii)	<i>passim</i>
8	Fed. R. Civ. P. 23(a)	8, 9
9	Fed. R. Civ. P. 42(a)	5
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on Thursday, February 23, 2012, at 2:00 p.m., or as soon thereafter as the matter may be heard, in Courtroom 8 of the Honorable William H. Alsup, the Laborers Pension Trust Fund for Northern California (“Northern California Laborers”) will and hereby does move this Court for an order granting consolidation, appointment of lead plaintiff, and approval of selection of lead counsel and local counsel.

Pursuant to the Private Securities Litigation Reform Act of 1995 (the “PSLRA”),
15 U.S.C. § 78u-4(a)(3)(B), Northern California Laborers will and hereby does move the Court
for an order: (1) consolidating the above-captioned related actions (the “Action”); (2)
appointing Northern California Laborers as Lead Plaintiff for a class of purchasers (the “Class”)
of Diamond Foods, Inc. (“Diamond Foods” or the “Company”) securities between December 9,
2010 and November 4, 2011, inclusive (the “Class Period”);¹ and (3) approving Northern
California Laborers’ selection of Labaton Sucharow LLP (“Labaton Sucharow”) as Lead
Counsel for the Class and Zelle Hofmann Voelbel & Mason LLP (“Zelle Hofmann”) as Local
Counsel for the Class. This Motion is made on the grounds that Northern California Laborers is
the “most adequate plaintiff” to serve as lead plaintiff. In support of this Motion, Northern
California Laborers submits herewith a Memorandum of Points and Authorities and the
Declaration of Michael W. Stocker (the “Stocker Decl.”).

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE ISSUES TO BE DECIDED

Northern California Laborers—a pension fund with more than a billion dollars in assets—respectfully submits that it should be appointed Lead Plaintiff on behalf of purchasers of Diamond Foods securities during the Class Period who incurred damages as a result of the

¹ The complaints filed against Diamond assert different class periods. After it is appointed, the Lead Plaintiff will reconcile the different class periods upon filing a consolidated complaint. For the purposes of this Motion, Northern California Laborers adopts the longest class period involved in these actions.

1 Defendants' alleged violations of the Exchange Act. As set forth in detail below, Northern
 2 California Laborers incurred a loss of \$227,473, as calculated under the last-in-first-out
 3 ("LIFO") loss calculation methodology, on its investments in Diamond Foods common stock.
 4 Accordingly, Northern California Laborers has a substantial financial interest in the relief
 5 sought by this litigation—an interest believed to be greater than that of any competing movant.

6 Northern California Laborers also meets the typicality and adequacy requirements of
 7 Rule 23 of the Federal Rules of Civil Procedure ("Rule 23") because its claims are typical of
 8 those of absent Class members, and it will fairly and adequately represent the interests of the
 9 Class. Indeed, the PSLRA's legislative history shows that Northern California Laborers is
 10 precisely the type of sophisticated institutional investor whose participation in securities class
 11 actions the PSLRA was meant to foster. In short, Northern California Laborers is the "most
 12 adequate plaintiff" and should be appointed Lead Plaintiff.

13 Northern California Laborers respectfully requests that the Court approve its choice of
 14 counsel. Northern California Laborers' choice for Lead Counsel, Labaton Sucharow, is a
 15 nationally-recognized securities class action firm that has recovered billions of dollars in
 16 damages for injured shareholders. Northern California Laborers' choice for Local Counsel,
 17 Zelle Hofmann, is a respected firm with substantial experience in the prosecution of class
 18 actions and complex litigation. These firms are eminently qualified to prosecute this case and
 19 have extensive experience in the prosecution of class actions and securities fraud claims such as
 20 those asserted in the Action.

21 **II. STATEMENT OF THE RELEVANT FACTS**

22 Pending before the Court are six complaints that were filed against: (1) Diamond Foods,
 23 a branded food company that specializes in processing, marketing, and distribution of culinary,
 24 snack, in-shell, and ingredient nuts;² (2) Michael J. Mendes, Diamond Foods' Chairman of the
 25 Board since January 2010, and President and Chief Executive Officer since 1997; and (3)

27 ² Diamond Foods is a Delaware corporation headquartered in San Francisco, California.
 28 Diamond Foods' stock is listed on the NASDAQ Global Select Market under the ticker symbol
 "DMND."

1 Steven M. Neil, Diamond Foods' Executive Vice President and Chief Financial and
 2 Administrative Officer since March 1, 2008 (collectively, "Defendants"). The complaint
 3 alleges violations of Sections 10(b) and 20(a) of the Exchange Act and U.S. Securities and
 4 Exchange Commission ("SEC") Rule 10b-5 promulgated thereunder.

5 Founded in 1912, Diamond Foods is a packaged food company that builds, acquires,
 6 and (re)energizes brands. The Company's product lines include Kettle Chips, Emerald snack
 7 nuts, Pop Secret popcorn, and Diamond of California snack and culinary nuts.

8 On April 5, 2011, Diamond Foods announced that it had reached an agreement with the
 9 Proctor & Gamble Company ("P&G") to acquire P&G's Pringles brand in a transaction worth
 10 \$2.35 billion. The Company had a strong incentive to keep its share price high in the months
 11 preceding the consummation of the deal, as Diamond Foods' stock was to make up \$1.5 billion
 12 of the price of the Pringles acquisition. The transaction was to be completed by the end of
 13 2011.

14 Accordingly, during the Class Period, the Company had a strong incentive to inflate its
 15 share prices in anticipation of the Pringles deal. It appears that the Company accomplished this
 16 by manipulating its payments to walnut growers.

17 As part of its business model, Diamond Foods enters into output contracts with walnut
 18 growers for their crops. Pursuant to these agreements, walnut growers deliver their entire
 19 walnut crop to Diamond during the fall harvest season. Diamond Foods customarily pays
 20 walnut growers for the previous fall's harvest in installments that are completed by the end of
 21 the Company's fiscal year the following July.³

22 In early September 2011, Diamond Foods made an estimated \$50 million in what it
 23 called "Momentum Payments" to its walnut growers. Diamond Foods asserted that these
 24 unusual payments were for the upcoming fall 2011 crop—a break from its usual practice.⁴ In
 25 fact, these payments appear to have been for the previous year's crop—meaning that the

26
 27 ³ Diamond Foods' fiscal year runs from August 1 through July 31.
 28 ⁴ The Action alleges that *The Wall Street Journal* first disclosed these momentum payments on
 September 27, 2011.

1 Company had in the preceding months deliberately underpaid growers for their product. This
 2 ploy permitted the Company to artificially maximize its revenues in the months leading up to
 3 the proposed Pringles acquisition.

4 The Action alleges that, during the Class Period, Defendants made false and/or
 5 misleading statements and/or failed to disclose that: (1) the Company overstated its earnings by
 6 improperly accounting for certain crop payments to walnut growers; (2) the Company's
 7 acquisition of Pringles would be delayed; (3) the Company lacked adequate internal and
 8 financial controls; and (4) as a result of the foregoing, the Company's financial results were
 9 materially false and misleading at all relevant times.

10 On September 25, 2011, Off Wall Street Consulting Group, a hedge fund research firm,
 11 issued a report questioning Diamond Foods' accounting practices with respect to walnut
 12 purchases. On September 27, 2011, *The Wall Street Journal* published an article disclosing
 13 Diamond Foods' momentum payments. According to the *Journal*, those payments would have
 14 significantly reduced the Company's fiscal year 2011 results had they been made on or before
 15 July 31, 2011. The *Journal* also noted that as walnut prices surged for the 2010 crop, Diamond
 16 Foods actually paid growers much less than most buyers. On this news, Diamond Foods' stock
 17 price dropped \$8.31 per share, or 9.20 percent, on September 26 and 27, 2011, to close at
 18 \$82.06 per share on September 27, 2011.

19 After the markets closed on November 1, 2011, Diamond Foods disclosed that its Audit
 20 Committee had received an external communication describing accounting issues with the
 21 Company's payments to walnut growers. As a result of this development, the Company
 22 explained that it would delay its acquisition of Pringles until the first half of 2012 pending the
 23 outcome of an investigation by the Audit Committee. On this news, Diamond Foods' share
 24 price declined \$11.33 per share, or more than 17.6 percent, to close at \$52.79 per share on
 25 November 2, 2011.

26 On November 3, 2011, *The Wall Street Journal* reported that the Company's
 27 investigation was focusing on the timing of the momentum payments. The *Journal* also noted
 28 that because the Pringles transaction was tied to the price of Diamond Foods' stock, if the

1 Company's stock price fell it would have to take on more debt to consummate the transaction.
 2 Following these revelations, Diamond shares declined \$6.39 per share, or 12.1 percent in two
 3 consecutive trading sessions, to close at \$46.40 per share on November 4, 2011. On November
 4 5, 2011, *Barron's* published an article that explained the Company's accounting issues and
 5 payments to walnut growers in more detail. On this news, the Company's stock price fell an
 6 additional \$7.31 per share, or more than 15.7 percent, to close at \$39.09 per share on November
 7 7, 2011.

8 The Company's misconduct and the revelations thereof have caused Diamond Foods'
 9 stockholders to incur hundreds of millions of dollars in losses.

10 **III. ARGUMENT**

11 **A. THE RELATED ACTIONS SHOULD BE CONSOLIDATED**

12 The PSLRA provides that “[i]f more than one action on behalf of a class asserting
 13 substantially the same claim or claims arising under this chapter has been filed,” a court shall
 14 not appoint a lead plaintiff “until after the decision on the motion to consolidate is rendered.”
 15 U.S.C. § 78u-4(a)(3)(B)(ii). Under Rule 42(a) of the Federal Rules of Civil Procedure
 16 (“Rule 42(a”), consolidation is appropriate when the actions involve common questions of law
 17 or fact. Fed. R. Civ. P. 42(a); *see also Aronson v. McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146,
 18 1150 (N.D. Cal. 1999) (same).

19 Here, the six related actions are ideally suited for consolidation pursuant to Rule 42(a)
 20 because their unification will expedite pretrial proceedings, reduce case duplication, and
 21 minimize the expenditure of time and money for all concerned parties. These actions present
 22 substantially similar factual and legal issues, arise from the same alleged scheme by
 23 Defendants, and allege violations of Sections 10(b) and 20(a) of the Exchange Act. Because
 24 these actions are based on the same facts and involve the same subject matter, discovery
 25 obtained in this lawsuit will undoubtedly be relevant to all others. Accordingly, consolidation
 26 of the above-captioned actions is appropriate under Rule 42(a) and the PSLRA, and the
 27 Northern California Laborers respectfully submits that these actions should be consolidated.

1 **B. NORTHERN CALIFORNIA LABORERS
SHOULD BE APPOINTED LEAD PLAINTIFF**

2 **1. The PSLRA Standard for Appointing Lead Plaintiff**

3 The PSLRA provides a straightforward procedure for selecting lead plaintiff for “each
 4 private action arising under [the Exchange Act] that is brought as a plaintiff class action
 5 pursuant to the Federal Rules of Civil Procedure.” 15 U.S.C. § 78u-4(a)(1); *see also* 15 U.S.C.
 6 § 78u-4(a)(3)(B) (setting forth procedure for selecting lead plaintiff). Specifically, Section
 7 21D(a)(3)(A)(i) of the Exchange Act, as amended by the PSLRA, specifies that:

8 Not later than 20 days after the date on which the complaint is
 9 filed, the plaintiff or plaintiffs shall cause to be published, in a
 10 widely circulated national business-oriented publication or wire
 11 service, a notice advising members of the purported plaintiff class—

12 (I) of the pendency of the action, the claims asserted therein,
 13 and the purported class period; and

14 (II) that, not later than 60 days after the date on which the
 15 notice is published, any member of the purported class may move
 16 the court to serve as lead plaintiff of the purported class.

17 15 U.S.C. § 78u-4(a)(3)(A)(i); *see also* *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002).

18 Under the PSLRA, a court is to consider any motion made by class members and appoint
 19 the movant that the court determines to be most capable of adequately representing the interests
 20 of the class as lead plaintiff. Specifically, the PSLRA provides that a court:
 21

22 shall appoint as lead plaintiff the member or members of the
 23 purported plaintiff class that the court determines to be most
 24 capable of adequately representing the interests of class members
 25 (. . . the “most adequate plaintiff”)

26 15 U.S.C. § 78u-4(a)(3)(B)(i).

27 In adjudicating a lead plaintiff motion, a court shall adopt a presumption that the “most
 28 adequate plaintiff” is the person or group of persons who: (1) filed a complaint or made a
 motion to serve as lead plaintiff; (2) has the largest financial interest in the relief sought by the
 class; and (3) who otherwise satisfies the requirements of Rule 23. *See* 15 U.S.C. § 78u-
 4(a)(3)(B)(iii)(I); *see also* *Cavanaugh*, 306 F.3d at 729-30.

Under the sequential procedure set forth by the Ninth Circuit in *Cavanaugh*, this presumption may be rebutted by proof that the presumptively most adequate plaintiff “will not fairly and adequately protect the interests of the class” or “is subject to unique defenses that render such plaintiff incapable of adequately representing the class.” *Id.* at 741; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

2. Northern California Laborers is the “Most Adequate Plaintiff”

Northern California Laborers respectfully submits that it is the presumptive “most adequate plaintiff” because it has complied with PSLRA procedural requirements, holds the largest financial interest of any movant, and satisfies Rule 23’s typicality and adequacy requirements.

a. Northern California Laborers Has Satisfied the PSLRA’s Procedural Requirements

Northern California Laborers has filed this Motion to serve as lead plaintiff in a timely manner. Pursuant to 15 U.S.C. § 78u-4(a)(3)(A)(i), the first plaintiff to file a complaint in the Action caused notice regarding the pending nature of this case to be published on *Business Wire*, a widely-circulated, national, business-oriented news wire service, on November 7, 2011. *See* Stocker Decl. Ex. C; *see also* Salhuana Dkt. No. 20. Thus, as permitted by the PSLRA, any person who is a member of the proposed Class may apply to be appointed lead plaintiff within sixty (60) days after publication of the notice, *i.e.*, on or before January 6, 2012. Northern California Laborers has filed its motion within the required period.

b. Northern California Laborers Has the Largest Financial Interest in the Relief Sought by the Class

The PSLRA instructs the Court to adopt a rebuttable presumption that the “most adequate plaintiff” for lead plaintiff purposes is the movant with the largest financial interest in the relief sought by the class, so long as the movant meets the requirements of Rule 23. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *see also* *Ferrari v. Gisch*, 225 F.R.D. 599, 602 (C.D. Cal. 2004) (citing *Cavanaugh*, 306 F.3d at 729-30).

1 During the Class Period, Northern California Laborers incurred a substantial loss of
 2 approximately \$227,473 calculated under the LIFO method of accounting for purchases and
 3 sales.⁵ *See Loss Analysis, Stocker Decl. Ex. B.* Consequently, and because it also satisfies
 4 Rule 23's typicality and adequacy requirements, Northern California Laborers is entitled to the
 5 legal presumption that it is the most adequate plaintiff.

6 **c. Northern California Laborers Satisfies
 7 Rule 23's Typicality and Adequacy Requirements**

8 In addition to the largest financial interest requirement, the PSLRA also directs that the
 9 lead plaintiff must "otherwise satisf[y] the requirements of Rule 23 . . ." 15 U.S.C. § 78u-
 10 (4)(a)(3)(B)(iii)(I)(cc). With respect to class certification, Rule 23(a) requires that: (1) the class
 11 is so numerous that joinder of all members is impracticable; (2) there are questions of law or
 12 fact common to the class; (3) such claims are typical of those of the class; and (4) the
 13 representative will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a).
 14 However, "[a]t the lead plaintiff selection stage, all that is required is a 'preliminary showing'
 15 that the lead plaintiff's claims are typical and adequate." *Aronson*, 79 F. Supp. 2d at 1158
 16 (quoting *Wenderhold v. Cylink Corp.*, 188 F.R.D. 577, 587 (N.D. Cal. 1999)); *see also In re*
 17 *Charles Schwab Sec. Litig.*, No. C 08-01510-WHA, 2008 WL 2635495, at *3 (N.D. Cal. July 3,
 18 2008) (noting that the inquiry focuses on Rule 23's typicality and adequacy requirements in the
 19 context of appointing lead plaintiff).

20 **(i) Northern California Laborers'
 21 Claims Are Typical of Those of the Class**

22 The typicality requirement of Rule 23(a)(3) is satisfied when the representative plaintiff:
 23 "(1) suffered the same injuries as class members; (2) as a result of the same course of conduct;

24 ⁵ Northern California Laborers' loss is also \$227,473 under the first-in-first-out ("FIFO") loss
 25 calculation methodology. However, FIFO is not preferred by courts in the Ninth Circuit. *See*
Pappas v. Countrywide Fin. Corp., No. 07-cv-5295, slip op. at 14 (C.D. Cal. Nov. 28, 2007)
 26 (Pfaelzer, J.), Stocker Decl. Ex. D ("[C]ourts have generally rejected FIFO as an appropriate
 27 means of calculating losses in securities fraud cases.") (internal quotation marks and citation
 28 omitted); *In re Sipex Corp. Sec. Litig.*, 05-cv-392-WHA, slip op. at 7 (N.D. Cal. May 24, 2005),
 Stocker Decl. Ex. E ("In the Court's view, LIFO is closer to the economic realities of market
 investing and the purposes of the securities acts.").

and (3) their claims are based on the same legal issues.” *Charles Schwab*, 2008 WL 2635495, at *4 (citing *Armour v. Network Assocs., Inc.*, 171 F. Supp. 2d 1044, 1050 (N.D. Cal. 2001)). Rule 23(a) requires only that resolution of the common questions affect all, or a substantial number of, class members. *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 657 (C.D. Cal. 2000). As the Ninth Circuit Court of Appeals has noted, typicality is not an exacting test, because “[u]nder [Rule 23’s] permissive standards, representative claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

The typicality requirement is met here because Northern California Laborers, which is not subject to any unique or special defenses, seeks the same relief and advances the same legal theories as other Class members. Like all members of the Class, Northern California Laborers: (1) acquired Diamond Foods securities during the Class Period, (2) at prices that are alleged to have been artificially inflated by Defendants' misrepresentations and omissions, and (3) suffered damages as a result. *See Ferrari*, 225 F.R.D. at 606 (discussing ways in which lead plaintiff movants can meet the typicality requirement). These shared claims, which are based on the same legal theories and arise from the same events and course of conduct as the Class' claims, satisfy Rule 23(a)(3)'s typicality requirement. *In re Surebeam Corp. Sec. Litig.*, No. 03-cv-1721, 2004 WL 5159061, at *6 (S.D. Cal. Jan. 5, 2004) (reciting typicality standard).

(ii) Northern California Laborers Will Fairly and Adequately Protect the Interests of the Class

The adequacy of representation requirement of Rule 23(a)(4) is satisfied when a representative party establishes that it “will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The adequacy requirement is met if no conflicts exist between the representative’s interests and those of the class, and the representative’s attorneys are qualified, experienced and generally able to conduct the litigation. *Richardson v. TVIA, Inc.*, No. C 06 06304, 2007 WL 1129344, at *4 (N.D. Cal. Apr. 16, 2007); see also *Charles Schwab*, 2008 WL 2635495, at *4 (“The ‘adequacy’ requirement is satisfied when the proposed lead plaintiff does not have interests antagonistic to the proposed class.”).

1 Northern California Laborers will fairly and adequately represent the interests of the
2 proposed Class. No antagonism exists between Northern California Laborers' interests and
3 those of absent Class members; rather, the interests of Northern California Laborers and the
4 Class members are squarely aligned. In addition, Northern California Laborers has retained
5 counsel highly experienced in prosecuting securities class actions vigorously and efficiently,
6 and has timely submitted its choice to the Court for approval, in accordance with the PSLRA.
7 *See* 15 U.S.C. § 78u-4(a)(3)(B)(v). Northern California Laborers suffered substantial losses
8 due to Defendants' alleged fraud and, therefore, has a sufficient interest in the outcome of this
9 case to ensure vigorous prosecution of the Action. Accordingly, Northern California Laborers
10 satisfies the adequacy requirement.

d. Northern California Laborers Is Precisely the Type of Lead Plaintiff Envisioned by the PSLRA

In addition to satisfying the requirements of Rule 23, Northern California Laborers—a large, sophisticated institutional investor—is the type of investor Congress sought to encourage to assume a more prominent role in securities litigation with the enactment of the PSLRA’s lead plaintiff provisions. Congress noted in its PSLRA Statement of Managers Report that the PSLRA was formulated “to increase the likelihood that institutional investors will serve as lead plaintiff[],” in part, because “[i]nstitutional investors and other class members with large amounts at stake will represent the interests of the plaintiff class more effectively than class members with small amounts at stake.” *In re Cendant Corp. Litig.*, 264 F.3d 201, 244, 264 (3d Cir. 2001) (quoting S. Rep. No. 104-98, at 10 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 690 and H.R. Rep. No. 104-369, at 34 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 733)).

Created in 1963 by a trust agreement between the Associated General Contractors of California, Inc. and the Northern California District Council of Laborers, affiliated with the Laborers' International Union of North America, AFL-CIO, Northern California Laborers provides retirement and other benefits to thousands of laborers and their dependents. Northern California Laborers, which is headquartered in Fairfield, California, had more than \$1.3 billion in assets as of May 1, 2009.

1 Northern California Laborers is a sophisticated institutional investor with sufficient
 2 resources to adequately litigate the Action and supervise Class counsel. Northern California
 3 Laborers understands the fiduciary duties of a lead plaintiff, is willing to oversee the vigorous
 4 prosecution of the Action, and has pledged to “provid[e] testimony at deposition and trial, if
 5 necessary.” *See Certification, Stocker Decl. Ex. A.* Thus, as demonstrated herein, Northern
 6 California Laborers is the very personification of the lead plaintiff contemplated by the PSLRA.

7 **C. THE COURT SHOULD APPROVE NORTHERN
 8 CALIFORNIA LABORERS’ SELECTION OF COUNSEL**

9 The PSLRA vests authority in the lead plaintiff to select and retain counsel to represent
 10 the class, subject to court approval. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v); *Cavanaugh*, 306 F.3d at
 11 732 n.11. Northern California Laborers has selected Labaton Sucharow to serve as Lead
 12 Counsel for the Class. Labaton Sucharow actively practices complex litigation and has
 13 successfully prosecuted numerous securities fraud class actions on behalf of injured investors.

14 Labaton Sucharow, Northern California Laborers’ choice for Lead Counsel, has
 15 excelled as lead counsel in numerous important actions on behalf of defrauded investors.
 16 Labaton Sucharow is lead counsel in *In re American International Group, Inc. Securities
 17 Litigation*, No. 04-cv-8141 (S.D.N.Y. 2004), in which it recently achieved settlements-in-
 18 principle totaling approximately \$1 billion. In addition, Labaton Sucharow is lead counsel in *In
 19 re Countrywide Financial Corp. Securities Litigation*, No. 07-cv-5295 (C.D. Cal. 2007), which
 20 resulted in a settlement of \$624 million—one of the largest securities fraud settlement arising
 21 from the financial crisis of 2007 to 2008. Labaton Sucharow also serves as lead counsel in *In
 22 re Broadcom Corp. Class Action Litigation*, No. 06-cv-5036 (C.D. Cal. 2006), the largest
 23 accounting restatement arising from options backdating. Labaton Sucharow achieved a cash
 24 settlement of \$160.5 million for the class—at the time, the second-largest cash settlement in an
 25 options backdating case. Labaton Sucharow also served as co-lead counsel in *In re
 26 HealthSouth Corp. Securities Litigation*, No. 03-cv-1501 (N.D. Ala. 2003), the largest securities
 27 fraud arising out of the healthcare industry, which resulted in a total settlement amount of
 28 \$804.5 million for the class. Labaton Sucharow is currently serving as the court-appointed lead

1 or co-lead counsel in the securities fraud cases against The Bear Stearns Cos., Inc., Federal
 2 National Mortgage Association (Fannie Mae), Satyam Computer Services Ltd., and Goldman
 3 Sachs Group, Inc., among other significant investor litigations. In *In re Monster Worldwide,*
 4 *Inc. Securities Litigation*, No. 07-cv-2237, Hr'g Tr. at 24:25-25:1 (S.D.N.Y. June 14, 2007),
 5 Judge Jed S. Rakoff appointed Labaton Sucharow as lead counsel, stating that “the Labaton
 6 firm is very well known to . . . courts for the excellence of its representation.” *See also* Labaton
 7 Sucharow Firm Resume, Stocker Decl. Ex. F.

8 Proposed Local Counsel Zelle Hofmann has handled class actions and complex
 9 litigation for more than 40 years, including matters arising under the securities laws. *See* Zelle
 10 Hofmann Firm Resume, Stocker Decl. Ex. G. The firm has a national reputation for its trial and
 11 litigation skills, as well as for resolving highly complex disputes. Members of Zelle Hofmann
 12 have been selected to serve as Lead, Co-Lead, Liaison, or as members of Executive Committees
 13 in numerous class action cases that have recovered substantial damages for class members.
 14 Most significantly, the firm has a prominent practice in Northern District of California.

15 Thus, the Court may be assured that by granting this motion, the Class will receive the
 16 highest caliber of legal representation.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Northern California Laborers respectfully requests that the
 19 Court: (1) consolidate the above-captioned related actions pursuant to Rule 42(a); (2) appoint
 20 Northern California Laborers as Lead Plaintiff; and (3) approve Northern California Laborers’
 21 selection of Labaton Sucharow as Lead Counsel for the Class and Zelle Hofmann as Local
 22 Counsel for the Class.

23 DATED: January 6, 2012

24 Respectfully submitted,

25 /s/ Jiangxiao Athena Hou

26 Jiangxiao Athena Hou (Bar. No. 215256)

27 **ZELLE HOFMANN VOELBEL
& MASON LLP**

28 44 Montgomery Street, Suite 3400
San Francisco, California 94104

Telephone: (415) 693-0700
Facsimile: (415) 693-0770
Email: ahou@zelle.com

Proposed Local Counsel for the Class

Christopher J. Keller
Eric J. Belfi
Michael W. Stocker (Bar No. 179083)
LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477
Email: ckeller@labaton.com
ebelfi@labaton.com
mstocker@labaton.com

*Counsel for Laborers Pension Trust
Fund for Northern California and
Proposed Lead Counsel for the Class*

1 **PROOF OF SERVICE VIA ELECTRONIC POSTING PURSUANT TO NORTHERN**
2 **DISTRICT OF CALIFORNIA LOCAL RULES AND ECF GENERAL ORDER NO. 45**

3 I, the undersigned, say:

4 I am a citizen of the United States and am employed in the office of a member of the
5 Bar of this Court. I am over the age of 18 and not a party to the within action. My business
5 address is 44 Montgomery Street, Suite 3400, San Francisco, California 94104.

6 On January 6, 2012, I caused to be served the following documents:

- 7 1. Notice of Motion and Motion, and Memorandum of Points and Authorities in
8 Support of the Motion of Laborers Pension Trust Fund for Northern California for
8 Consolidation, Appointment as Lead Plaintiff, and Approval of Selection of Counsel
- 9 2. [Proposed] Order for Consolidation, Appointment as Lead Plaintiff, and Approval of
10 Selection of Counsel
- 11 3. Declaration of Michael W. Stocker in Support of the Motion of Laborers Pension
12 Trust Fund for Northern California for Consolidation, Appointment as Lead
12 Plaintiff, and Approval of Selection of Counsel
- 13 4. Certification of Jiangxiao Athena Hou Pursuant to Civil Local Rule 3-7(D)
- 14 5. Certification of Christopher J. Keller Pursuant to Civil Local Rule 3-7(D)
- 15 6. Certification of Eric J. Belfi Pursuant to Civil Local Rule 3-7(D)
- 16 7. Certification of Michael W. Stocker Pursuant to Civil Local Rule 3-7(D)

18 By posting these documents to the ECF Website of the United States District Court for the
18 Northern District of California, for receipt electronically by the parties as reflected on the
19 attached Court's Service Lists.

20 And on the following non-ECF registered party:

21 Jeffrey Block
22 Jason M. Leviton
23 Block & Leviton LLP
23 155 Federal Street
23 Suite 1303
24 Boston, Massachusetts 02110

25 By Mail: By placing true and correct copies thereof in individual sealed envelopes, with
25 postage thereon fully prepaid, which I deposited with my employer for collection and mailing
26 by the United States Postal Service. I am readily familiar with my employer's practice for the
26 collection and processing of correspondence for mailing with the United States Postal Service.
27 In the ordinary course of business, this correspondence would be deposited by my employer
27 with the United States Postal Service that same day.

1 I hereby certify that I caused an electronic copy of the foregoing documents to be
2 forwarded via email to the following Designated Internet Site, in compliance with Civil Local
Rule 23-2(c)(2):

3 Securities Class Action Clearinghouse
4 Stanford University School of Law
5 Crown Quadrangle
Stanford, CA 94305-8612
scac@law.stanford.edu

6
7 I certify under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct. Executed on January 6, 2012, at San Francisco, California.

8
9 /s/ Jiangxiao Athena Hou
10 Jiangxiao Athena Hou

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Mailing Information for a Case 3:11-cv-05386-WHA

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Daniel E. Barenbaum**
dbarenbaum@bermandevalerio.com
 - **Brian Joseph Barry , Esq**
bribarry1@yahoo.com
 - **Peter Arthur Binkow**
info@glancylaw.com,pbinkow@glancylaw.com
 - **Jennifer Corinne Bretan**
jbretan@fenwick.com,mbafus@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com
 - **Lionel Z. Glancy**
info@glancylaw.com
 - **Michael M. Goldberg**
info@glancylaw.com
 - **Dean S. Kristy**
dkristy@fenwick.com,kayoung@fenwick.com,cprocida@fenwick.com
 - **Susan Samuels Muck**
smuck@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com,cprocida@fenwick.com
 - **Robert Vincent Prongay**
rprongay@glancylaw.com
 - **Mark Punzalan**
mpunzalan@finkelsteinthompson.com,arivas@finkelsteinthompson.com,bassad@finkelsteinthompson.com,ttien@finkelsteinthompson.com,jdito@finkelsteinthompson.com,srenwic@finkelsteinthompson.com
 - **Casey Edwards Sadler**
csadler@glancylaw.com
 - **James John Varellas , III**
jvarellas@fenwick.com
 - **Shawn A. Williams**
shawnw@rgrdlaw.com,khuang@rgrdlaw.com,e_file_sd@rgrdlaw.com,e_file_sf@rgrdlaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

Mailing Information for a Case 3:11-cv-05399-WHA

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Daniel E. Barenbaum**
dbarenbaum@bermandevalerio.com
- **Jennifer Corinne Bretan**
jbretan@fenwick.com,mbafus@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com
- **Dean S. Kristy**
dkristy@fenwick.com,kayoung@fenwick.com,cprocida@fenwick.com
- **Susan Samuels Muck**
smuck@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com,cprocida@fenwick.com
- **Anthony David Phillips**
aphillips@bermandevalerio.com,ysoboleva@bermandevalerio.com
- **Joseph J. Tabacco , Jr**
jtabacco@bermandevalerio.com,ysoboleva@bermandevalerio.com
- **James John Varellas , III**
jvarellas@fenwick.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

Mailing Information for a Case 3:11-cv-05409-WHA

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Arthur Nash Bailey , Jr**
abailey@hausfeldllp.com,celder@hausfeldllp.com
- **Daniel E. Barenbaum**
dbarenbaum@bermandevalerio.com
- **Jennifer Corinne Bretan**
jbretan@fenwick.com,mbafus@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com
- **Dean S. Kristy**
dkristy@fenwick.com,kayoung@fenwick.com,cprocida@fenwick.com
- **Michael P. Lehmann**
mlehmann@hausfeldllp.com
- **Susan Samuels Muck**
smuck@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com,cprocida@fenwick.com
- **Whitney E. Street**
wstreet@blockesq.com
- **James John Varellas , III**
jvarellas@fenwick.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Jeffrey Block
Block & Leviton LLP
155 Federal Street
Suite 1303
Boston, MA 02110

Jason M. Leviton
Block & Leviton LLP
155 Federal Street
Suite 1303
Boston, MA 02110

Mailing Information for a Case 3:11-cv-05457-WHA**Electronic Mail Notice List**

The following are those who are currently on the list to receive e-mail notices for this case.

- **Daniel E. Barenbaum**
dbarenbaum@bermandevalerio.com
- **Jennifer Corinne Bretan**
jbretn@fenwick.com,mbafus@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com
- **Dean S. Kristy**
dkristy@fenwick.com,kayoung@fenwick.com,cprocida@fenwick.com
- **Susan Samuels Muck**
smuck@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com,cprocida@fenwick.com
- **Mark Punzalan**
mpunzalan@finkelsteinthompson.com,arivas@finkelsteinthompson.com,bassad@finkelsteinthompson.com,ttien@finkelsteinthompson.com,jdito@finkelsteinthompson.com,srenwic@finkelsteinthompson.com
- **James John Varellas , III**
jvarellas@fenwick.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

Mailing Information for a Case 3:11-cv-05479-WHA

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Daniel E. Barenbaum**
dbarenbaum@bermandevalerio.com
- **Jennifer Corinne Bretan**
jbretan@fenwick.com,mbafus@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com
- **Dean S. Kristy**
dkristy@fenwick.com,kayoung@fenwick.com,cprocida@fenwick.com
- **Susan Samuels Muck**
smuck@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com,cprocida@fenwick.com
- **Darren Jay Robbins**
e_file_sd@rgrdlaw.com
- **James John Varellas , III**
jvarellas@fenwick.com
- **David Conrad Walton**
davew@rgrdlaw.com
- **Shawn A. Williams**
shawnw@rgrdlaw.com,khuang@rgrdlaw.com,e_file_sd@rgrdlaw.com,e_file_sf@rgrdlaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

Mailing Information for a Case 3:11-cv-05615-WHA

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Daniel E. Barenbaum**
dbarenbaum@bermandevalerio.com
- **Jennifer Corinne Bretan**
jbretan@fenwick.com,mbafus@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com
- **Robert S. Green**
CAND.USCOURTS@CLASSCOUNSEL.COM
- **Dean S. Kristy**
dkristy@fenwick.com,kayoung@fenwick.com,cprocida@fenwick.com
- **Susan Samuels Muck**
smuck@fenwick.com,kayoung@fenwick.com,pnichols@fenwick.com,cprocida@fenwick.com
- **James John Varellas , III**
jvarellas@fenwick.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)